



EMPLOYMENT TRIBUNALS

Claimant: Ms S Thompson

Respondent: Change Grow Live

Heard at: Manchester (remotely; by CVP)

On: 25 October 2022

Before: Employment Judge K M Ross
(sitting alone)

Representatives

For the claimant: In person For the respondent: Ms Anderson, Counsel

JUDGMENT

1. The Tribunal does not have jurisdiction to hear the claimant's application dated 16 November 2021, to amend her claim to add a claim of victimisation because the claimant's claim was dismissed by a Judgement dated 30 April 2022 and sent to the parties on 23 May 2022.
2. The Tribunal does not have jurisdiction to hear the respondent's application to strike out the claim dated 4 October 2022 because the claimant's claim was dismissed by a Judgement dated 30 April 2022 and sent to the parties on 23 May 2022
3. Accordingly, the applications are dismissed.

REASONS

1. This case has a complicated history.

2. The claimant presented a claim of discrimination on the grounds of sex/race/religion on 22 January 2021 (she had gone to ACAS on 29 November 2020 and the certificate was issued on 22 December 2020). She named 2 respondents, Change Grow Live, the present respondent and an individual respondent Kevin Morris.
3. At a case management hearing before Employment Judge Batten on 16 August 2021, sent to the parties on 3 September 2021, the claim was clearly identified as harassment only on the grounds of sex and/or race and/or religion and belief. A time limit issue was identified together with an issue as to whether the Tribunal had jurisdiction to hear the claim because the claimant was a volunteer for the first respondent at the time of the alleged harassment.
4. Employment Judge Batten arranged for a preliminary hearing on 8 December 2021 to determine whether the claimant was in the employment of the first respondent within the meaning of section 83(2) Equality Act 2010, and secondly whether the first respondent was an employment service provider providing a service to the claimant within the meaning of section 55 of the Equality Act 2010. If she was neither, the Tribunal would not have jurisdiction to hear the claim.
5. Meanwhile the claimant's solicitors sent an application to amend the claim on 17 November 2021 to add a claim for victimisation against the first respondent. (The claimant had secured an offer of employment from the first respondent which was withdrawn and her volunteer placement was terminated, both on 18 August 2021 which the claimant alleged was connected to a grievance of November 2020 or her Tribunal claim presented on 22 January 2021.) The Tribunal informed the parties on 23 November 2021 that the issue of the proposed amendment would be dealt with at the "upcoming preliminary hearing".
6. In fact the preliminary hearing on 8 December 2021 had to be adjourned due to video connection issues. Accordingly, it was relisted and heard before Employment Judge Ord on 29 April 2022.
7. At that hearing Employment Ord issued a Judgment in relation to both respondents dated 30 April 2022 that "the claimant's complaints of harassment are dismissed on the basis that the Tribunal does not have jurisdiction to hear them, as the claimant was not in the employment of the first respondent and nor was the first respondent an employment service provider".
8. Employment Judge Ord issued directions for a hearing to determine the amendment application. That hearing was listed for 25 October 2022.
9. However by that stage there was no claim because it had been dismissed

10. In the meantime, the claimant's solicitors ceased representation.
11. The respondent issued an application dated 4 October 2022 to strike out the claim in relation to the claimant's non-compliance with case management orders for the preliminary hearing listed for 25 October 2022 and sought a copy of the Judgment of Employment Judge Ord from the hearing on 29 April 2022 which it said it had not received.
12. At the outset of the hearing today, the Judgment of Employment Judge Ord was sent again to the parties.
13. The parties agreed Judge Batten had identified the claim as Harassment only on the grounds of sex and/or race and/or religion and belief and that the Judgment of Judge Ord showed the Harassment claim had been struck out.
14. I apologised to the claimant in particular, a litigant in person, for the confusion in relation to this matter and I explained to the parties that given the harassment claim had been struck out and that all parties had agreed before Judge Batten that the only claim was for harassment there was nothing left of the claim. Accordingly, there was nothing for the Tribunal to hear in terms of an application to strike out or an application to amend.
15. Ms Anderson, with her duty to the court, checked the Presidential Guidance and reminded me that amendments can be made after Judgment, but of course that is a different situation. She informed me that she too was unaware of any authority to suggest that a claim which no longer existed because it had been dismissed, could be amended.
16. Accordingly, I find the Tribunal does not have jurisdiction to hear these applications and they are dismissed
17. I explained to the claimant that should she wish to attempt to pursue her claim for victimisation she should resubmit a new claim (ET1) to the Tribunal very urgently, including on it the details from her solicitor in their email to the Tribunal dated 17 November 2021 (the application to amend) and also include with her claim a request for an urgent hearing to determine whether the Tribunal has jurisdiction to hear the claim, having regard to the issue on time limits. I advised her to seek legal advice.
18. I explained that in discrimination cases the Tribunal has a discretion under section 123 Equality Act 2010 to extend the time limit but normally a complaint of discrimination must be made to the Tribunal within 3 months of the act of which she complains.

Employment Judge K M Ross

Date: 25 October 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
26 October 2022

S Harlow

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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